



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
312 North Spring Street, Room G-8
Los Angeles, CA 90012
Tel: (213) 894-3535

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4750

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

SHERRI R. CARTER
District Court Executive and
Clerk of Court

January 3, 2008

Clerk, United States District Court
Northern District of California
Phillip Burton United States Courthouse, 16th Floor
450 Golden Gate Avenue
San Francisco, CA 94102-3434

Re: Transfer of our Civil Case No. CV 07-07809 MMM (E)

Case Title: United States of America vs. Jose B. Hernandez

FILED
JAN 30 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Dear Sir/Madam:

An order having been made transferring the above-numbered case to your district, we are transmitting herewith our entire original file in the action, together with certified copies of the order and the docket. Please acknowledge receipt of same and indicate below the case number you have assigned to this matter on the enclosed copy of this letter and return it to our office. Thank you for your cooperation.

Very truly yours,

Clerk, U.S. District Court

By **PATRICIA M. CLARKE**
Deputy Clerk

~~cc: All counsel of record~~

=====

TO BE COMPLETED BY RECEIVING DISTRICT

Receipt is acknowledged of the documents described herein and we have assigned this matter case number CV: CV 08 0710 MMC (PR)

Clerk, U.S. District Court

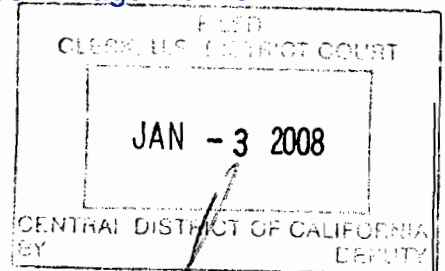
By **HELEN L. ALMACEN**
Deputy Clerk

I hereby attest and certify on 1-3-08
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
[Signature]
DEPUTY CLERK



1177



E-filing

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 08

0710MMC

(PR)

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE B. HERNANDEZ,

Petitioner.

NO. CV 07-7809-MMM(E)

REVISED ORDER TRANSFERRING

ACTION TO UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA¹

Petitioner filed a form "Motion to Vacate, Set Aside or
Correct Sentence By a Person in Federal Custody" on November 30,
2007. It appears from the Motion, however, that Petitioner
challenges a 2006 conviction in the Santa Clara County Superior
Court. Hence the Court construes the Petition as a habeas corpus
petition brought pursuant to 28 U.S.C. section 2254.

Venue for section 2254 petitions is proper in the district
wherein the petitioner is in custody or the district wherein the
state court that convicted and sentenced the petitioner is located.

¹ The "Order Transferring Action, etc." filed
December 18, 2007, is withdrawn.

28 U.S.C. § 2241(d). Petitioner currently is in custody in Arizona, but challenges a conviction in the Santa Clara Superior Court, a court located within the Northern District of California. See 28 U.S.C. § 84(a). The policy of the federal courts in California is to transfer to the district of conviction all section 2254 petitions that challenge convictions. Thus, transfer to the Northern District of California is appropriate. See Bell v. Watkins, 692 F.2d 999, 1013 (5th Cir. 1982), cert. denied, 464 U.S. 843 (1983) (district court properly transferred habeas petition to district of conviction because, *inter alia*, district of conviction "was the more convenient forum because of the accessibility of evidence"); see also 28 U.S.C. § 1404(a) (any civil action may be transferred to any other district where the action might have been brought "[f]or the convenience of parties and witnesses, in the interest of justice").

IT IS THEREFORE ORDERED that this action is hereby transferred to the United States District Court for the Northern District of California, at San Francisco, California, and that the Clerk of this Court shall effect such transfer.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order upon Petitioner.

DATED: _____

December 21, 2007

Margaret M. Morrow
MARGARET M. MORROW
UNITED STATES DISTRICT JUDGE

194, CLOSED

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:07-cv-07809-MMM-E**

Jose B Hernandez v. United States of America
Assigned to: Judge Margaret M. Morrow
Referred to: Magistrate Judge Charles F. Eick
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 11/30/2007
Date Terminated: 01/03/2008
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner**Jose B Hernandez**

represented by **Jose B Hernandez**
A 92991767
Ice Federal Detention Center
1705 East Hanna Road
Eloy, AZ 85231
PRO SE

V.

Respondent**United States of America**

Date Filed	#	Docket Text
11/30/2007	1	PETITION for Writ of Habeas Corpus by a Person In State Custody (28:2254). Case assigned to Judge Margaret M. Morrow and referred to Magistrate Judge Charles F. Eick. (Filing fee \$ 5 DUE.), filed by Petitioner Jose B Hernandez. (et) (Entered: 12/06/2007)
11/30/2007	2	NOTICE OF REFERENCE TO A U.S. MAGISTRATE JUDGE. Pursuant to the provisions of the Local Rules, the within action has been assigned to the calendar of Judge Margaret M. Morrow and referred to Magistrate Judge Charles F. Eick to consider preliminary matters and conduct all further matters as appropriate. The Court must be notified within 15 days of any change of address. (et) (Entered: 12/06/2007)
12/24/2007	3	Letter from Jose B. Hernandez re Order from the Superior Court, County of Santa Clara filed by Petitioner. (sp) (Entered: 01/03/2008)
01/03/2008	4	REVISED ORDER TRANSFERRING ACTION TO UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA by Judge Margaret M. Morrow: IT IS THEREFORE ORDERED that this action is hereby transferred to the United States

		District Court for the Northern District of California, at San Francisco, California, and that the Clerk of this Court shall effect such transfer. IT IS FUTHER ORDERED that the Clerk shall serve a copy of this Order upon Petitioner. (See document for further details.) (MD JS-6. Case Terminated.) (pcl) (Entered: 01/03/2008)
01/03/2008		TRANSMITTAL of documents: all original documents except Order of Transfer which is retained; cc copy of Order, docket sheet and letter of transfer. (pcl) (Entered: 01/03/2008)

PACER Service Center			
Transaction Receipt			
01/03/2008 16:35:24			
PACER Login:	us3877	Client Code:	
Description:	Docket Report	Search Criteria:	2:07-cv-07809- MMM-E
Billable Pages:	1	Cost:	0.08

I hereby attest and certify on 1-3-08
that the foregoing document is a full, true
and correct copy of the original on file in
my office, and in my legal custody.

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Patricia Clark
DEPUTY CLERK



1177

JOSE B. HERNANDEZ

Name

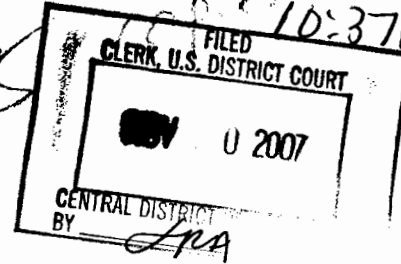
A# 92991767

Prison Identification/Booking No.

1705 E. HANNA RD ELOY ARIZONA;
ADDRESS or PLACE OF CONFINEMENT

Note: It is your responsibility to notify the Clerk of Court in writing of any change of address.

Note: If represented by an attorney; his name, address & telephone number.



UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
PLAINTIFF,

v.

JOSE B. HERNANDEZ
FULL NAME OF MOVANT (Include name under which you were convicted)

PETITIONER.

CASE NUMBER
CASE No. CV- 07-7809 mmm (E)
To be supplied by the Clerk of the United States District Court
(530) **CV 08 0710 (PR)**
CASE No. CR- CC 596809
Criminal case under which sentence was imposed

MMC

**MOTION TO VACATE, SET ASIDE OR
CORRECT SENTENCE BY A PERSON IN
FEDERAL CUSTODY**
28 U.S.C. § 2255 2254

510

INSTRUCTIONS AND INFORMATION - READ CAREFULLY

DOCKETED ON CM
DEC - 6 2007

This motion must be legibly handwritten or typewritten and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. Where more room is needed to answer any question use reverse side of sheet.

Additional pages are not permitted. No citation or authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

Upon receipt, your motion will be filed if it is in proper order. NO FEE is required with this motion.

If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to pay costs. If you wish to proceed in forma pauperis, you must have an authorized officer of the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

NOV 26 2007

CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each judgment.

Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.

When the motion is fully completed, the original and 3 copies must be mailed to the Clerk of the United States District Court, whose address is 312 N. Spring Street, Los Angeles, Ca 90012.

ATTN: Intake/Docket Section

Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

MOTION

1. Name and location of court which entered the judgment of conviction under attack SUPERIOR COURT, SAN JOSE CA,
SANTA CLARA CO;
2. Date of judgment of conviction NOV 12 / 06
3. Length of sentence 7 MONTH Sentencing Judge RICE, RANDOLF
4. Nature of offense or offenses for which you were convicted Possession of Stolen property 496(A)(F)
(F) 496(C) MS 11550 UNDER THE INFLUENCE

5. What was your plea? (Check one)

- (a) Not guilty ()
(b) Guilty ()
* Nolo Contendere (✓)

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details _____

6. Kind of trial: (Check one)

- (a) Jury ()
(b) Judge only ()

Did you testify at the trial? Yes () No ()

8. Did you appeal from the judgment of conviction? Yes () No ()

9. If you did appeal, answer the following:

- (a) Name of Court SIXTH APPELLATE DISTRICT
 (b) Result COUNSEL FILE A (WENDE BREIF (People v. NAME 1979))
 (c) Date of Result APRIL 17/07

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court? Yes (☒) No (☐)

11. If your answer to 10 was "yes", give the following information:

- (a) (1) Name of Court U.S. DISTRICT COURT ARIZONA DISTRICT
 (2) Nature of Proceeding HABEAS CORPUS
 (3) Grounds raised INEFFECTIVE ASSISTANCE FROM COUNSEL; I NEVER RECEIVE ANY MINIMUM INFORMATION FROM COUNSEL; TAKE TODAY DEAL OR JUDGE WILL GIVE YOU MORE TIME RIGHT IN A PLEA ARGUMENT ABOUT THE LAW AND THE CONSEQUENCES OF THE PLEA THAT I AM SUPPOSE TO KNOW I WAS GOING TO BE TAKING INTO CUSTODY AFTER SERVING MY TIME IS BEING 12 MONTHS PLUS 7 MONTHS ON DS INTO THIS MATTER
 (4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes (☐) No (☒)
 (5) Result Pending
 (6) Date of result Pending
 (b) (1) Name of Court APPELLAT COURT - ARIZONA DISTRICT
 (2) Nature of Proceeding HABEAS CORPUS
 (3) Grounds raised INEFFECTIVE ASSISTANCE FROM COUNSEL; NEVER GOT ANY INFORMATION REGARDING IMMIGRATION AS REQUIRED BY THE LAW
 (4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes (☐) No (☒)
 (5) Result Pending
 (6) Date of result Pending
 (c) (1) Name of Court SUPERIOR COURT SAN JOSE CA
 (2) Nature of Proceeding CORAM VOBIS
 (3) Grounds raised INEFFECTIVE ASSISTANCE FROM COUNSEL NEVER GOT ANY IMMIGRATION INFORMATION OR COLLATERAL CONSEQUENCES TO THIS PLEA

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes () No (✓)

(5) Result Pending

(6) Date of result Pending

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes () No ()

(2) Second petition, etc. Yes () No ()

(3) Third petition, etc. Yes () No ()

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: _____

I HAVE NOT RECEIVED NO ANSWER ON ANY PETITION

State concisely every ground on which you claim that you are being held unlawfully.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you selected one or more of these grounds for relief, you must allege facts in support of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

- A. Ground one: (A) WENT INTO A PLEA IGNORANT OF THE CONSEQUENCES OF THIS PLEA

Supporting FACTS (tell your story briefly without citing cases or law): NO INTELLIGENT PLEA DECISION CAN BE MADE BY EITHER LAWYER OR CLIENT WITHOUT FULL UNDERSTANDING OF THE POSSIBLE CONSEQUENCES OF A CONVICTION. IN SOME DEFENDANT'S CASE THE CONSEQUENCES OF CONVICTION THEY ARE SO DEVASTATING THAT EVEN THE FAINTEST RAY OF HOPE OFFERED BY PUBLIC DEFENDANT IS MAGNIFIED IN SIGNIFICANCE. THE POSSIBLE CONSEQUENCES OF A CONVICTION REQUIRE RESEARCH IN EACH CASE CONCERNING THE LIABILITY TO DEPORTATION IF THE DEFENDANT IS A RESIDENT OF THE U.S.

- B. Ground two: FAILURE TO ADVISE CORRECTLY CONCERNING THE IMMIGRATION CONSEQUENCES; AND FAILURE TO ATTEMPT TO NEGOTIATE THE PLEA.

Supporting FACTS (tell your story briefly without citing cases or law): DO TO INADEQUATE REPRESENTATION NOW I AM ON REMOVAL PROCEEDING, CASE # A 92 951767; WHY SHOULD COUNSEL NOT LIKEWISE BE REQUIRED TO TAKE IMMIGRATION CONSEQUENCES INTO ACCOUNT IN NEGOTIATING A PLEA THAT WILL AVOID STRIPPING AWAY THE DEFENDANT'S LAWFUL PERMANENT RESIDENT STATUS AND FORCING THE U.S. TO DEPORT THE DEFENDANT AWAY FROM HIS HOME, SPOUSE, AN U.S. CITIZEN CHILDREN WHO WERE IN THE PLEA WAS SUCH CONDITION OR AT LEAST NOT ONE THAT I KNOW.

- C. Ground three: I BEING IN CALIFORNIA SINCE 1979, HAVE A WIFE 4 KIDS AND ALL MY FAMILY IS RESIDENT WE DON'T HAVE NO ONE IN MEXICO

Supporting FACTS (tell your story briefly without citing cases or law): IF MY LAWYER HAD TOLD ME MR. HERNANDEZ YOU NEED A IMMIGRATION LAWYER; WE NEED TO POST BOND THE COURT TILL WE CONSULT WITH THE IMMIGRATION LAWYER. THEN IT WOULD BE DIFFERENT, BUT UNFORTUNATELY FOR ME NO MEANINGFUL CONVERSATION WAS EVER ESTABLISHED BETWEEN MY LAWYER AND ME. TAKE THE DEAL IS THE BEST YOU GOIN TO GET; CAN I SPEAK TO ANOTHER LAWYER I SAY LAWYER SAY NO I AM THE ONLY ONE YOU GET; SO NOW DO TO THIS INADEQUATE REPRESENTATION I BEING IN CUSTODY SINCE NOV/2/07 TILL I DON'T KNOW WHEN.

- D. Ground four: WIT A BETTER ADVISE AND BETTER REPRESENTATION I WOULD BE ON BETTER GROUNDS. IF COUNSEL DID WANT TO DEFEND ME HE JUST HAD TO SAY IT.


Supporting FACTS (tell your story briefly without citing cases or law): IN CALIFORNIA, FOR EXAMPLE, IN PEOPLE V. SORIANO, THE COURT OF APPEAL HELD THAT IN ORDER TO RENDER EFFECTIVE ASSISTANCE OF COUNSEL, DEFENSE COUNSEL MUST INVESTIGATE THE PARTICULAR IMMIGRATION CONSEQUENCES TO THE DEFENDANT OF A PLEA BARGAIN AND ADVISE THE CLIENT OF THOSE CONSEQUENCES PRIOR TO ENTRY OF THE PLEA. THE COURT HELD IT INSUFFICIENT FOR COUNSEL TO RELAY ON THE GENERAL LANGUAGE OF THE ADVISE THE COURT MUST GIVE UNDER PENAL CODE § 1016.5.

13. If any of the grounds listed in 12A, B, C and D were not previously presented, state briefly what grounds were not presented, and reasons for not presenting them:
- _____
- _____
14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes () No ()
15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attached herein:
- (a) At preliminary hearing _____
- (b) At arraignment and plea _____
- (c) At trial _____
- (d) At sentencing _____
- (e) On appeal _____
- (f) In any post-conviction proceeding _____
- (g) On appeal from any adverse ruling in a post-conviction proceeding _____
16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at approximately the same time? Yes () No (✓)
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes () No (✓)
- (a) If so, give the name and location of court which imposed sentence to be served in the future: _____
- (b) And give date and length of sentence to be served in the future: _____
- Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed sentence to be served in the future?
Yes () No ()

WHEREFORE, movant prays that the court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on _____
(Date)



Signature of Movant

JOSE B. HERNANDEZ
(Petitioner)

DECLARATION IN SUPPORT
OF REQUEST
TO PROCEED
IN FORMA PAUPERIS

CLERK UNITED STATES DISTRICT COURT
(Respondent[s])

I, JOSE B. HERNANDEZ, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes _____ No ✓

a. If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.

b. If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

AB 05 / ABOVE AND BEYOND HOME REMEDIATION 11 HR

2. Have you received, within the past twelve months, any money from any of the following sources?

a. Business, profession or form of self-employment? Yes _____ No ✓

b. Rent payments, interest or dividends? Yes _____ No ✓

c. Pensions, annuities or life insurance payments? Yes _____ No ✓

d. Gifts or inheritances? Yes _____ No ✓

e. Any other sources? Yes _____ No ✓

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in a checking or savings account? Yes _____ No ✓
(Include any funds in prison accounts)

If the answer is yes, state the total value of the items owned. _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes _____ No ✓

If the answer is yes, describe the property and state its approximate value. _____

List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. MICHELLE LEE HERNANDEZ; STEPHANIE M. HERNANDEZ; JOSEPH M. HERNANDEZ; MATTEW JAMES HERNANDEZ; my kids; Common Law Wife MARIE A. GUARDADO

I, declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

Executed on Nov/20/07
(Date)

[Signature]
Signature of Petitioner

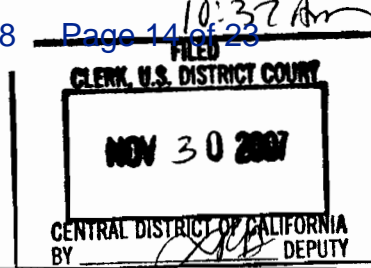
CERTIFICATE

I hereby certify that the Petitioner herein has the sum of \$ 5.86 on account to his credit at the ELOY DETENTION CENTER institution where he is confined. I further certify that Petitioner likewise has the following securities to his credit according to the records said NO OTHER SECURITIES OTHER THAN THE \$ 5.86.

DATED 11-21-07

[Signature]
Authorized Officer of Institution

CORRECTIONAL COUNSELOR, ELOY DET. CTR.
Title of Officer



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

USA

PLAINTIFF(S)

V.

JOSE B. HERNANDEZ

DEFENDANT(S)

CASE NUMBER

CV07- 7809 MMM (E)

NOTICE OF REFERENCE TO A
UNITED STATES MAGISTRATE JUDGE
(Petition for Writ of Habeas Corpus)

Pursuant to General Order 07-02, the within action has been assigned to the calendar of the Honorable Margaret M. Morrow, U.S. District Judge. Pursuant to General Order 05-07, the within action is referred to U.S. Magistrate Judge Charles Eick, who is authorized to consider preliminary matters and conduct all further hearings as may be appropriate or necessary. Thereafter, unless the Magistrate Judge determines that an evidentiary hearing is required, the Magistrate Judge shall prepare a report and recommendation and file it with the Clerk of the Court which may include proposed findings of fact and conclusions of law where necessary or appropriate, and may include a proposed written order or judgment, which shall be mailed to the parties for objections.

Pleadings and all other matters to be called to the Magistrate Judge's attention shall be formally submitted through the Clerk of the Court.

The Court must be notified within fifteen (15) days of any address change. If mail directed by the clerk to your address of record is returned undelivered by the Post Office, and if the Court and opposing counsel are not notified in writing within fifteen (15) days thereafter of your current address, the Court may dismiss the petition with or without prejudice for want of prosecution.

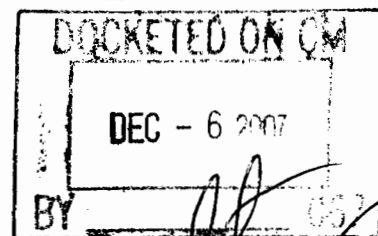
Clerk, U.S. District Court

December 4, 2007

Date

By LRAYFORD

Deputy Clerk



NARESH RAJAN
LAW OFFICES OF NARESH RAJAN
333 BRADFORD STREET, SUITE 190
REDWOOD CITY, CA 94063



PHONE (650) 861-0782
FAX (866) 805-2576

NRAJANLAW@GMAIL.COM

December 7, 2007

Jose B. Hernandez
A#92991767 A-515
1705 E. Hanna Road
Eloy, AZ 85231

Re: **Transcript from your case, H031113**

Dear Jose:

Enclosed, please find the transcript for your case. I apologize for the delay in sending this stuff to you. Best of luck with your habeas corpus petition. It sounds like you have an immigration lawyer for your case, which is a good thing.

I can't agree with you that the document that you sent to me, which I am returning, clearly shows that Ms. Bedolla or Mr. Sharkey provided ineffective assistance of counsel. The document does not address effective assistance of counsel. It seems to be factually incorrect as well, as it says that you did not appeal your conviction, which as we both know, is incorrect.

Either way, I am sending you the transcripts in your case. I wish you the best of luck, and hope you are successful in your habeas corpus petition and in fighting deportation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Naresh Rajan'.

Naresh Rajan
Attorney at Law

(ENDORSED)
FILED
 DEC 05 2007

KIRI TORRE
 Chief Executive Officer/Clerk
 Superior Court of CA County of Santa Clara
 BY JANE LINN DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

In re) Nos. CC596809, CC626991
)
 JOSE HERNANDEZ) O R D E R
)

JOSE HERNANDEZ ("Petitioner") has filed multiple petitions seeking to vacate his convictions in the above entitled cases. Petitioner asserts in these petitions that his lawyer provided ineffective assistance of counsel by failing to inform him that he would be deported if he pled.

In order to demonstrate ineffective assistance of counsel, a defendant must show (1) that his counsel's performance was deficient because the lawyer's representation fell below an objective standard of reasonableness under prevailing professional norms and (2) counsel's deficient performance subjected the defendant to prejudice, i.e., there is a reasonable probability that, but for counsel's failings, the result would have been more favorable to the defendant. (Strickland v. Washington (1984) 466 U.S. 668, 687-688, cited in In Re Harris (1993) 5 Cal.4th at 832-833; In Re Alvernas (1992) 2 Cal.4th 924, 936-937 and People v. Haskett (1990) 52 Cal.3d 210, 248.)


Likewise, in order to make a successful collateral attack on a conviction obtained through a guilty plea on the grounds of (1)

misadvisement or failure to advise of the consequences of the plea, or
(2) a denial of constitutional rights, the petitioner must allege and
prove prejudice. (In Re Moser (1993) 6 Cal.4th 342; People v. Walker
(1991) 54 Cal.3d 1013; People v. Tassell (1984) 36 Cal.3d 77; In re
Ronald E. (1977) 19 Cal.3d 315; People v. Avila (1994) 24 Cal.App.4th
1455; People v. Cooper (1992) 7 Cal.App.4th 593.) That is, the
Petitioner must demonstrate that if he had been correctly advised
about the consequences of his plea, and had been aware of his
constitutional rights, he would not have pleaded guilty. (In Re Moser
(1993) 6 Cal.4th 342; People v. Walker (1991) 54 Cal.3d 1013; People
v. Tassell (1984) 36 Cal.3d 77; In re Ronald E. (1977) 19 Cal.3d 315;
People v. Avila (1994) 24 Cal.App.4th 1455; People v. Cooper (1992) 7
Cal.App.4th 593.)

Petitioner herein has failed to establish a basis for relief.
Petitioner has failed to establish that even if he were so informed by
his attorney that his conviction would result in deportation that he
would not have pled. Petitioner has failed to show that he would have
gone to trial where he received a lesser term and dismissals on other
charges in exchange for the plea and where there did not appear to be
a reasonable probability of a different result if he had gone to
trial.

Accordingly, the petitions are DENIED.

DATED: 3 Dec, 2007


PAUL BERNAL
JUDGE OF THE SUPERIOR COURT

cc: Petitioner
Office of the District Attorney of Santa Clara County
CJIC
Research



**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF SANTA CLARA**

In The Matter of

JOSE HERNANDEZ,

Petitioner on Habeas Corpus.

CASE NO(s). CC596809 & CC626991

PROOF OF SERVICE OF:

(ENDORSED)
ORDER OF COURT**FILED**

DEC 05 2007

CLERK'S CERTIFICATE OF SERVICE

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY JANE LINN DEPUTY

THE UNDERSIGNED STATES:

"I AM A CITIZEN OF THE UNITED STATES, OVER 18 YEARS OF AGE, EMPLOYED IN SANTA CLARA COUNTY AND NOT A PARTY TO THE WITHIN ACTION; THAT MY BUSINESS ADDRESS IS THE HALL OF JUSTICE, SAN JOSE, CALIFORNIA; THAT I SERVED THE WITHIN NOTICE, (ORDER OF COURT), BY CAUSING TO BE PLACED A TRUE COPY THEREOF IN ENVELOPES ADDRESSED TO THE PARTIES AND APPLICABLE AGENCIES INDICATED BELOW, WHICH ENVELOPES WERE THEN SEALED AND POSTAGE FULLY PREPAID THEREON AND THEREAFTER DEPOSITED IN THE UNITED STATES MAIL AT SAN JOSE, CALIFORNIA, (OR PERSONALLY DEPOSITED INTO THE APPROPRIATE INTER-DEPARTMENTAL COURIER RECEPTACLE(S) FOR DELIVERY OR PERSONALLY DEPOSITED INTO THE APPROPRIATE INTER-OFFICE PICK-UP BOX WHERE APPLICABLE) ON DATE SHOWN BELOW; THAT THERE IS REGULAR DELIVERY SERVICE BY THE UNITED STATES MAIL AT THE PLACE SO ADDRESSED OR THAT THERE IS REGULAR DELIVERY SERVICE BETWEEN THE COURTHOUSE AND BELOW-LISTED AGENCIES, OFFICES OR DEPARTMENTS."

I declare under penalty of perjury that the foregoing is true and correct.

KIRI TORRE,
CHIEF EXECUTIVE OFFICER/CLERK

EXECUTED ON December 5th, 2007
at San Jose, California

BY:

Jane E. Linn
Jane E. Linn, Deputy Courtroom Clerk
Department 26 – Hall of Justice

<p><u>Petitioner</u></p> <p>JOSE BARAJAS HERNANDEZ ✓ A92991767 Unit A 515 Eloy Federal Detention Center 1705 East Hanna Road Eloy, AZ 85231 by First Class Mail</p>	<p><u>Respondent</u></p> <p>OFFICE OF THE DISTRICT ATTORNEY County of Santa Clara 70 West Hedding – West Wing San Jose, CA 95110 (Placed in PONY TRANSFER pick-up box)</p>
<p><u>CJC - Hall of Justice</u> 190 West Hedding Street San Jose, CA 95110 (Placed in Inter-Office Pick-Up Box)</p>	<p><u>Research - Hall of Justice</u> 190 West Hedding Street San Jose, CA 95110 (Placed in Inter-Office Pick-Up Box)</p>



[CERTIFICATE OF SERVICE]

I, JOSE B. HERNANDEZ, do hereby certify under the penalty of perjury and the laws of the state of Arizona, that I have served a copy of the foregoing documents in the interested parties postage paid and addressed to:

*United States District Court
Central District of California
Western Division
312 NORTH SPRING STREET, Room 6-8
LOS ANGELES, CA 90012*

By placing a copy for mailing in the U.S. Mail box located in my assigned housing unit, 1705 East Hanna Road, Eloy Arizona 85231.

I declare that the foregoing is True and correct to the best of my knowledge and belief.

Executed on: *Dec/20/07*

Respectfully Submitted,

Jose B. Hernandez



SHERRI R. CARTER

District Court Executive
and Clerk of Court

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION
312 North Spring Street, Room G-8 Los
Angeles, CA 90012
Tel: (213) 894-3535

SOUTHERN DIVISION

411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4570

EASTERN DIVISION

3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

Tuesday, December 04, 2007

JOSE B. HERNANDEZ
A92991767 UNIT A 515
1705 EAST HANNA ROAD
ELLOY, AR, 95231

Dear Sir/Madam:

Your petition has been filed and assigned civil case number CV07- 7809 MMM (E)

Upon the submission of your petition, it was noted that the following discrepancies exist:

- ☒ 1. You did not pay the appropriate filing fee of \$5.00. Submit a cashier's check, certified bank check, business or corporate check, government issued check, or money order drawn on a major American bank or the United States Postal Service payable to 'Clerk U.S. District Court'. If you are unable to pay the entire filing fee at this time, you must sign and complete this court's Prisoner's Declaration In Support of Request to Proceed In Forma Pauperis in its entirety. The Clerk's Office will also accept credit cards (Mastercard, Visa, Discover, American Express) for filing fees and miscellaneous fees. Credit card payments may be made at all payment windows where receipts are issued.
- ☐ 2. The Declaration in Support of Request to Proceed in Forma Pauperis is insufficient because:
- ☐ (a) You did not sign your Declaration in Support of Request to Proceed in Forma Pauperis.
- ☐ (b) Your Declaration in Support of Request to Proceed in Forma Pauperis was not completed in its entirety.
- ☐ (c) You did not submit a Certificate of Prisoner's Funds completed and signed by an authorized officer at the prison.
- ☐ (d) You did not use the correct form. You must submit this court's current Declaration in Support of Request to Proceed in Forma Pauperis.
- ☐ (e) Other: _____

Enclosed you will find this court's current Prisoner's Declaration in Support of Request to Proceed in Forma Pauperis, which includes a Certificate of Funds in Prisoner's Account Form.

Sincerely,

Clerk, U.S. District Court

LRAYFORD

By: _____

Deputy Clerk

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS	DEFENDANTS
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number)	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<table style="width: 100%;"> <tr> <td><input type="checkbox"/> 1 U.S. Government Plaintiff</td> <td><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input type="checkbox"/> 2 U.S. Government Defendant</td> <td><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</td> </tr> </table>	<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%;"> <tr> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> </tr> <tr> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Citizen of This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Citizen of Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	PTF	DEF		PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen of Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 6	<input type="checkbox"/> 6
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)																								
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<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen of Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																					
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 6	<input type="checkbox"/> 6																					

IV. NATURE OF SUIT (Place an "X" in One Box Only)						
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS <table style="width: 100%;"> <tr> <td style="vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td style="vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> </tr> </table>	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act
PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability					
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)	Transferred from
<input type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Judge from Magistrate Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause:
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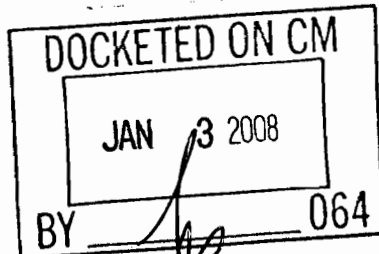
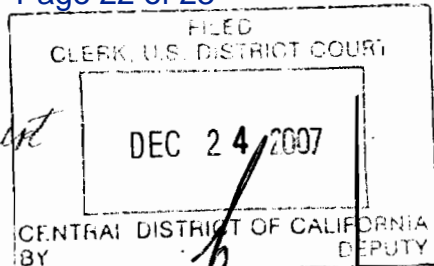
VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".
-------------------------------------	--

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)	<input type="checkbox"/> SAN FRANCISCO/OAKLAND <input type="checkbox"/> SAN JOSE
---	--

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

United States District Court
Central District of California
Western Division



José B. Hernandez
A-92991757
1705 E HANNO ROAD
ELY, AZ. 85031.

CASE # CV07-7809 AHS

Dear Sir/Madam,

I direct my self with the respect the court deserve
and wish you all a happy holidays.

Enclose are the respond from the Santa Clara Co
deputies but none of them i was denied. But
I want show, or proofs that Counsel (ms. Bedella)
and (mr. Shurkey) provide effective assistance. They are
not saying (mr Hernandez we did give you proper advice)
no they say i fail to prove this and that. I am
doing this work by my self i don have no experience
on the law but what i do no Sir. so i was never
give no advice, i dont have a lawyer helping me
on this. also inclose are a letter from a lawyer on San
Jose that was helping me with the probation violation appeal
and as you can see, he also states that ms Bedella and
mr Shurkey didnt give me the proper advice to me
immigration consequences, thank you for your time.

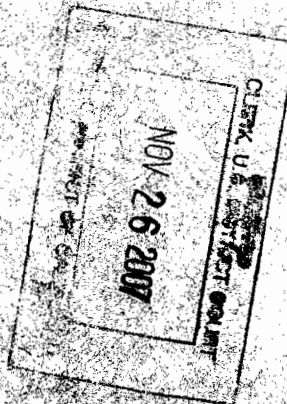
Sincerely José B. Hernandez CASE # CV07-7809 AHS.

Dec/20/07.

3

HERNANDEZ - BARAJAS JOSE
A92991767 UNIT A 515
1705 EAST HAMMA ROAD
ELOY, AZ 85231.

ICE Federal Detention Center.



[Handwritten signature]

TO THE CLERK OF THE UNITED STATES
DISTRICT COURT,
312 N. SPRING STREET,
LOS ANGELES CA, 90012.

